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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 327

KENNETH R. RICKEY, *Petitioner,*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITIONER'S REPLY MEMORANDUM

In its efforts to discourage scrutiny of the present record by this Court, the prosecution invokes a palpably inapplicable principle of law, and fudges the central factual aspect of the case.

First. The prosecution relies (Br. Op. 7-8) on *Johnson* v. *New Jersey,* 384 U. S. 719, a case plainly irrelevant here: *Johnson* involved collateral attack on a final judgment on the strength of a subsequent decision here, while this

case comes up on direct review, presenting contentions that rest on a decision handed down by this Court well before the trial herein even commenced, and that were consistently pressed throughout the entire proceeding.

For the principle of *Miranda* v. *Arizona,* 384 U.S. 436, was not new; if had been foreshadowed and actually anticipated by *Escobedo* v. *Illinois,* 378 U.S. 487, 492; and here petitioner is shown to have relied on the *Escobedo* case at every level below.

1. *Escobedo* was decided on June 22, 1964, whereas trial herein commenced on April 5, 1965, and continued through April 12, 1965.

2. Petitioner specifically invoked the *Escobedo* doctrine at the trial (Tr. 240-242, 297).

3. The *Escobedo* case was considered by the court below in the *Kohatsu* case, on which affirmance here was based (Pet. App. A1, A6-A8).

4. Petitioner is still relying on the *Escobedo* principle here (Pet. 11, 12, 14, 16).

Plainly, therefore, nothing in *Johnson* v. *New Jersey,* 384 U.S. 719, bars review here of the recurring question presented by the petition in this case.

Second. The central fact here, on which all of petitioner's contentions have rested at all stages, is that the challenged confrontation was with a Special Agent, a member of the Intelligence Division who "works on criminal matters" (Tr. 6), and whose purpose in the interview here in question was "if possible, of obtaining statements which might be incriminating" (Tr. 253).

Petitioner not only set out in detail the differences in function between Special Agents and Internal Revenue Agents (Pet. 3-5; Pet. App. A16-A17), but he specifically disclaimed reliance on any right to counsel while interviews

with only Internal Revenue Agents were in question, plainly stating that "the accusatory stage * * * was reached only when petitioner came under questioning by Special Agent Mott" (Pet. 11-12).

The prosecution's statement reflects the differences between Internal Revenue Agents and Special Agents (Br. Op. 2-5). But the prosecution's arguments speak only of statements to and discussions with "an Internal Revenue agent" (Br. Op. 6, 7). Thus the prosecution not only badly blurs the significant distinction on which petitioner's actual argument rests, but it answers only a contention that petitioner advisedly refrained from making.

CONCLUSION

For the foregoing additional reasons, it is respectfully submitted that the question actually presented by this case requires review, and that this petition for a writ of certiorari should accordingly be granted.

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